

## REMARKS

### **Summary of Office Action**

As an initial matter, Applicants note that the Examiner has once again failed to acknowledge the claim for foreign priority and the receipt of a copy of the certified copy of the priority document from the International Bureau in the Office Action Summary. Accordingly, the Examiner is again respectfully requested to acknowledge the claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f) and the receipt of a copy of the certified copy of the priority document in the next official communication by checking the appropriate boxes in the Office Action Summary. Should the Examiner not feel in a position to comply with this request the Examiner is respectfully requested to set forth the reason therefor in the next official communication.

Applicants note with appreciation that the Examiner has withdrawn the outstanding rejections under 35 U.S.C. § 112, first and second paragraphs, in view of the amended claims filed on November 29, 2010.

Claim 14 (and possibly one or more of the remaining claims under consideration) is newly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Korte et al., U.S. Patent 7,582,677 (hereafter “KORTE”), in view of Max et al., US 2005/0158350 A1 (hereafter “MAX”), and Tom Dieck et al., US 2005/0037042 A1 (hereafter “TOM DIECK”).

### **Response to Office Action**

Reconsideration and withdrawal of the rejections of record are again respectfully requested, in view of the following remarks.

Claim 14 is newly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over KORTE in view of MAX and TOM DIECK. In this regard, Applicants note that while according to the Office Action Summary claims 14-30, 32-37 and 39-47 are rejected, the Office Action itself only indicates claim 14 as rejected and further mentions claims 24-26 and 28-30 at page 3 thereof. Accordingly, it is not clear if in addition to claim 14 other claims (and if so, which claims) are rejected as well.

At any rate, Applicants submit that neither MAX nor TOM DIECK qualify as prior art with respect to the instant claims. For this reason alone, the instant rejection is apparently without merit.

In particular, MAX was published on July 21, 2005, i.e., after the effective U.S. filing date of the instant application (November 22, 2004, the filing date of International Application PCT/EP04/13254). Furthermore, the filing date of MAX is October 18, 2004, which is after the priority date of the instant application (December 3, 2003, the filing date of German Patent Application No. 103 57 451.4). In this regard it is pointed out that on November 12, 2010 Applicants filed a verified translation of the German priority application. Since it is believed that all of the instant claims are supported by the German priority application it is submitted that MAX is unavailable as prior art with respect to the instant claims.

Regarding TOM DIECK, it is noted that this application was published on February 17, 2005, i.e., after the effective U.S. filing date of the instant application (November 22, 2004, the filing date of International Application PCT/EP04/13254). Further, TOM DIECK was filed on July 13, 2004 as a continuation of PCT application PCT/EP03/05660. Accordingly, the filing date of TOM DIECK is

after the priority date of the instant application (December 3, 2003, the filing date of German Patent Application No. 103 57 451.4). Since Applicants have filed a verified translation of the German priority application and it is believed that all of the present claims are supported by the German priority application it is submitted that also TOM DIECK is unavailable as prior art with respect to the instant claims.

It further is pointed out that PCT application PCT/EP03/05660 (of which TOM DIECK is a continuation) was published in German, wherefore TOM DIECK is not entitled to any date under 35 U.S.C. § 102(e) other than its actual filing date of July 13, 2004.

In this regard, the Examiner is reminded of the requirements under which a U.S. application based on a PCT application is entitled to the filing date of the PCT application for the purposes of 35 U.S.C. § 102(e) (emphasis added):

A person shall be entitled to a patent unless —

(e) the invention was described in —

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent,  
except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

Applicants submit that for at least the foregoing reasons, withdrawal of the instant rejection under 35 U.S.C. § 103(a) is warranted and respectfully requested.

**CONCLUSION**

In view of the foregoing, it is believed that all claims of record are in condition for allowance. Accordingly, an early issuance of the Notices of Allowance and Allowability is again respectfully solicited. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

In this regard, Applicants respectfully request that withdrawn dependent claims 31 and 38 be rejoined in that they depend from allowable base claims (in contrast to what is stated in the Office Action Summary, claims 31 and 38 are still pending in this application, i.e., have never been cancelled).

Respectfully submitted,  
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/Heribert F. Muensterer/

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